COMP/119/2005 1/6 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 119 of 2005
In
COMPANY APPLICATION No. 398 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALKA INDIA LIMITED - Petitioner(s)
Versus
... - Respondent(s)

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Appearance :
SINGHI & CO for Petitioner(s) : 1,
None for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 16/11/2005

ORAL JUDGMENT

1.The present petition is preferred by the applicant company for sanctioning the scheme of amalgamation of Janice Textiles Ltd with the applicant company.

It appears that so far as the requirement under section 391 of Companies Act (hereinafter referred to as “the Act”) is concerned earlier orders were passed by this court (Coram: A.R.Dave,J) in Com.Petition No.398/04 and thereafter on 13.12.2004 in Misc.C.A.No.91/04 for holding the meeting of share holders and change the venue and also for holding the meeting of sole secured creditor. It appears that pending the aforesaid order, as per the petitioner, the outstanding debt of sole secured creditor was paid and the present petition is preferred for sanctioning the scheme of amalgamation and this court (Coram: K.A.Puj,J) on 7.7.05 while admitting the petition qua the meeting of sole secured creditor has observed at paras 5,6 and 7 which is as under:

“5.The petitioner has prayed for clarification in para-23(b) of the petition stating that in view of the averments made in para-16 of the petition, the earlier orders passed by this Court requiring the applicant Company to call the meetings of its secured creditor and the consequential steps in relation thereto, including the filing of Chairman's report in respect of such meetings may not be complied by the petitioner Company as there is no secured creditor of the petitioner Company. In para-16 the petitioner has stated that the petitioner Company has already paid the entire dues of the sole secured creditor, namely, Vijaya Bank, and necessary letters are also received from the said Bank which are annexed alongwith the petition. It is also stated that the petitioner Company has thereafter filed Form No.7 and 13 with the Registrar of Company signifying the satisfaction of the charge in view of

the payment made by the petitioner Company to sole secured creditor, namely, Vijaya Bank, The said copies of the Forms are enclosed with the petition. The petitioner has, therefore, submitted that the scheme in so far as it was made applicable to the sole secured creditor shall have no effect, and since there being no secured creditor of the petitioner Company, there is no question of offering any scheme to the secured creditors as a class as there is no secured creditor of the petitioner Company as on date.

6.With regard to the averments made in the petition, the Court has asked the petitioner to clarify as to from which sources the amount has been paid by the petitioner to the sole secured creditor, namely, Vijaya Bank. The Court would like to know as to whether any fresh borrowing is made for the purpose of making such payment. In this connection additional affidavit is filed by director of the petitioner Company, wherein it is stated that in terms of the compromise settlement i.e. OTS with its sole secured creditor, namely, Vijaya Bank, the petitioner paid the entire amount and also an amount of Rs.29,17,344/- for delay in payment of the said installments. It is further stated in the said affidavit that the principle outstanding of the sole secured creditors and interest portion thereon has been paid off by the petitioner Company from its internal accruals, including the realisation of current assets such as payments received by the petitioner Company from its debtors etc. The petitioner has also annexed certificate of Charter Accountant, who has certified that the entire amount of the installments and the interest for the delayed payment of the installments of the dues to Vijaya Bank, in term of the Compromise Settlement (OTS), has been paid out of the Company's internal accruals and realisation of current assets and they have not borrowed any amount to repay the said dues of Vijaya Bank.

7.In above view of the matter, the prayer made by the petitioner Company in para-23(b) is hereby granted.”

Therefore, said aspects stand concluded.

2.In pursuance to the order dated 7.7.05 of admitting

the petition and of advertisement and of serving notice to the Central Govt, the affidavit has been filed by Ashok R.Pandya, Director of the petitioner company stating that the notice has been served to the Regional Director, Department of Company Affairs on 18.7.05 and the advertisement is duly published in Indian Express and Loksatta-Jaasatta, both on 16/7/05 and the copies of advertisement are also produced. It has been stated on oath by filing affidavit of Ketul Contractor, Director of the applicant-company that no objection is received by the advocate or by the petitioner company in response to the advertisement given in both the aforesaid newspapers. Therefore, there is no objection brought to the notice of this court against sanctioning of the scheme of amalgamation.

3. Mr.Singhi, Ld.advocate for the petitioner has placed on record the copy of the communication receivewd by him through Mr.Malkan, Central Govt.Standing Counsel from the Registrar of Companies along with letter dated 26/10/05 of Regional Director addressed to the Registrar of Companies stating that the scheme has been examined and it has been decided by the Central Govt not to oppose the scheme of amalgamation. Therefore, it appears that on behalf of the Central

Govt no objection the scheme of amalgamation is submitted.

4. Further, it has also been stated and it was recorded on 25.10.2005 by this court that High Court of Bombay as per order dated 26.8.05 has sanctioned the scheme of amalgamation qua the transferor company and the order passed by the Bombay High Court was also placed on record.

5. Under the above circumstances, since all the formalities are complied with and no objection is brought to the notice of this court and the scheme of amalgamation having been approved by the equity share holders the scheme of amalgamation, the petitioner company with Jenice Textiles Ltd is hereby sanctioned . Hence, order accordingly.

6. The petitioner has prayed for various other reliefs in the petition which are not required to be considered since the legal consequences upon sanctioning the scheme in view of the order passed by this court are even otherwise also would follow.

7. The petition is allowed to the aforesaid extent.

8. The costs of the Central Govt.Standing Counsel shall be born by the petitioner and is quantified at Rs.3,000/- and said costs shall be paid by the petitioner to the Central Govt.Standing Counsel by

A/C payee cheque.

16.11.2005/murty (JAYANT PATEL,J)